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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1962

No. 716

ELIAS THIBODEAUX, ET AL,
Petitioners,

versus

P. FRANK COMEAUX, JR., ET AL,
Respondents.

Petition for Writ of Certiorari to the Supreme Court of the State of Louisiana.

[redacted].

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HAUSER PRINTING CO., INC., NEW ORLEANS

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P. FRANK COMEAUX, JR., ET AL,
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Petition for Writ of Certiorari to the Supreme Court of the State of Louisiana.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioners, ELIAS THIBODEAUX, ET AL, plaintiffs, and OLIN MATHIESON CHEMICAL CORPORATION, PAN AMERICAN PETROLEUM CORPORATION and CITIES SERVICE REFINING CORPORATION, intervenors, respectfully show:

I.

OPINIONS REPORTED

The opinion of the Supreme Court of Louisiana and said Court's per curiam on denial of the application for rehearing are found in the Appendix, beginning at Pages 16 and 37, respectively, and are reported in 145 So. 2d Reporter, beginning at Pages 1 and 11, respectively.

II.

JURISDICTIONAL STATEMENT

(a) The judgment to be reviewed was rendered by the Supreme Court of Louisiana on June 29, 1962. Its time of entry is October 3, 1962, when it became final upon denial of rehearing.

(b) Petitioners' application for rehearing was denied by the Louisiana Supreme Court on October 3, 1962 (145 So. 2d 11).

(c) Jurisdiction to review the judgment in question is conferred upon this Court by the provisions of 28 U.S.C.A., Section 1257 (3), providing that:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> . . . .
>
> "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

III.

QUESTION PRESENTED

The question presented for review is whether the action of defendants in proposing a capital expenditure and maintenance levy exceeding any reasonable need by 100%, and to cost intervenors herein approximately

$110,000.00 (including interest on bonds) more on capital outlay and $5000.00 more per year on maintenance than necessary to provide adequate recreational facilities for the respondent district, constitutes a gross abuse of power and a taking of property without due process of law, and without just compensation.

IV.

CONSTITUTIONAL PROVISIONS INVOLVED

The issues here involve the due process clauses of the Constitution of the United States providing (a) in Amendment V (USCA, Constitution, Amendments 1-5, Pages 297, 432, 698) that "No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation," and (b) in Amendment XIV, Section 1 (USCA, Constitution, Amendments 6-14, Pages 288, 383) that " * * * nor shall any State deprive any person of life, liberty, or property, without due process of law."

V.

STATEMENT OF THE CASE

(a) By this suit, thirty-seven plaintiffs, all being resident taxpayers of the purported Hackberry Recreation District of Cameron Parish, Louisiana, and three intervening non-resident corporate taxpayers attack the validity of an election held on September 17, 1960 at the call of the defendants acting as the Board of Commissioners of said district and the action of defendants in connection therewith, and, in addition, seek to enjoin defendants from issuing the bonds and levying the taxes thereby purportedly authorized for the purpose of providing and maintaining recreational facilities for the district.

(b) As one of the grounds for the relief sought, petitioners alleged in Articles 7 and 8 of their petition (Record, Page 16), that:

"7.

"Petitioners show further that the indebtedness of $290,000.00 sought to be incurred by the defendants for capital needs in connection with the establishment of recreational facilities for the Hackberry area, and the amount that would be produced by the proposed 4-mill maintenance tax are grossly in excess of the amount needed to provide adequate facilities and maintenance necessary to meet recreational needs in said area.

"8.

"The issuance of the aforesaid bond issue by defendants and the collection of any tax for the payment thereof, or for the maintenance of said project, under the above described unauthorized and defective election would accordingly be in contravention to law, and would amount to the taking and use of plaintiff's property without due process of law, all in violation of the equal protection and due process clauses of the United States Constitution, and particularly the Fifth and Fourteenth Amendments thereof • • • ."

The constitutional question so raised was urged throughout the proceedings (with abuse of power as an incidental point) and was decided in respondents' favor by both the Trial Court (Appendix, Page 12) and the Supreme Court (Appendix, Page 35, 45 So. 2d 1, 9, 10). In reaching this decision, the Supreme Court (Appendix, Page 35) adopted and quoted the ruling of the Trial Court, as follows:

"The preponderance of evidence on the subject is in favor of the plaintiffs' position that the amounts which the district proposes to spend for

> the recreation facilities and the maintenance and operation tax are greater than the need when compared with the recreational facilities of other communities. However, this Court cannot say that there is no room for a difference of opinion in this regard, or that the project is so costly that the action taken amounts to a gross abuse of the authority granted by law to the district."

(c) Though shown to have almost unlimited natural facilities for swimming, boating and hunting (Record 417), the Hackberry Recreation District, with a population of only 1180, proposes for recreation a capital expenditure of $290,000.00 and a 4-mill maintenance levy which, on the basis of 1960 assessments (Record 139-145, Exhibit PD-1), will produce $18,400.00 per year.

We find nearby Westlake providing greater but less elaborate facilities for 7100 people (R. 246) for a capital outlay of approximately $125,000.00 (R. 246-249) and an annual maintenance and operation cost of $5,682.74; and Moss Bluff in the same area furnishing substantially equal facilities for approximately 3,000 people at a capital expenditure of $145,000.00 and operating cost of about $6,000.00 per year (R. 207, 208). In addition, it was shown that the standard outlays for like recreational needs recommended by the National Recreation Association were $6.00 per capita for capital investment and $6.00 per capita per year for maintenance and operation (R. 235).

A newspaper advertisement run by defendants in promoting the project stated that 95% of the proposed expenditures would be paid by non-resident and corporate taxpayers, who, of course, had no voice in the matter (R. 151, Exhibit P-3); and stipulated assessment figures (R. 139-141, Exhibit PD-1) reveal that 55% of the total expenditures will be paid by intervenors herein.

VI.

ARGUMENT

Here the state courts have decided a federal question contrary to applicable decisions of this Honorable Court.

The defendants propose to spend approximately $290,000.00 for construction of recreational facilities to serve a community of only 1180 people, including approximately 300 school children. Non-resident and corporate owners, not permitted to vote in such matters, would pay 95% of the cost and resident property owners, who could vote, would pay only 5%. This unique situation was publicized by defendants, employing newspaper advertisements. The cost of retiring the twenty-year bonds at 4% interest would be approximately $20,300.00 per year, and the 4-mill maintenance tax would total about $18,400.00, based on present assessments. The total annual cost of $38,700.00 for the next twenty years would amount to $129.00 for each school child each year, or $32.80 for each person each year; a total of $774,000.00 for recreational facilities for 1180 people.

Comparable and adequate recreational facilities for similar communities with much larger populations were constructed for one half or less the proposed expenditure, and are operated at an annual cost of one third the proposed operating cost here contested.

The facilities proposed to be built and operated are recreational facilities in the community of Hackberry, but the taxing district purports to cover all of Ward 6 of Cameron Parish, in which ward Hackberry is located. There appears to be no conceivable way in which anyone other than the 1180 residents will benefit by the construction and operation of such elaborate recreational facil-

ities. Certainly, no benefit, direct or indirect, is seen for non-resident individual or corporate property owners.

It would appear certain that adequate recreational facilities for the small community could be constructed and operated for so much less as to make the proposals grossly excessive on their face. Such plans, greatly exceeding the needs, are arbitrary, unjust and unreasonable, and constitute both gross abuse of power and a taking of private property without due process of law.

Such unjust action by a governmental subdivision must be restrained if the due process requirements of the Constitution are to have meaning. We suggest that the cases of *Village of Norwood vs. Baker*, 172 U.S. 269, 19 S. Ct. 187, *Wight vs. Police Jury*, 264 F. 705, *Crampton vs. Zabriskie*, 101 U.S. 601, 25 L. Ed. 1070, and *Myles Salt Co. vs. Iberia Drainage District*, 239 U.S. 478, 36 S. Ct. 204, 205, 206, 60 L. Ed. 392, illustrate the intention of the courts to give meaning and life to the constitutional protection provided by the due process clauses.

The *Myles Salt Co.* case involved the creating of a drainage district and the levy of taxes for drainage purposes. In its opinion, the Supreme Court reasoned:

> " * * * It is true the law of the state as written is not attacked, **but the law as administered and justified by the supreme court of the state is attacked,** and it is asserted to be a violation of the Constitution of the United States. The question presented is Federal and the motion to dismiss is denied.
>
> * * * * *
>
> "It is to be remembered that a drainage district has the special purpose of the improvement of particular property, and when it is so formed to include property which is not and cannot be

benefited directly or indirectly, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation. *Phillip Wagner vs. Leser, supra.* We are not dealing with motives alone, but as well with their resultant action; we are not dealing with disputable grounds of discretion or disputable degrees of benefit, but with an exercise of power determined by considerations not of the improvement of plaintiff's property, but solely of the improvement of the property of others,—power, therefore, arbitrarily exerted, imposing a burden without a compensating advantage of any kind." (Emphasis ours)

The Court of Appeals, Fifth Circuit, following the lead of the Supreme Court in the *Myles Salt Co.* case, in its opinion in the *Wight vs. Police Jury* case, stated:

> "It is conceived, however, that any subdivision of the state might be territorially so defined that protection would have to be given against arbitrary, unreasonable, and confiscatory action. While the relief would usually be against local boards, action by a State Legislature might demand relief from the courts. All of the rules which have been announced with reference to districts of any kind recognize the possibility of unjust, unreasonable, arbitrary action. The Courts, while going far to sustain action creating districts and levying and making assessment, nevertheless give efficient life to the constitutional provision which prohibits the taking of private property without due process of law."

In *Norwood vs. Baker*, which in effect followed *Crampton vs. Zabriskie*, the court, in decreeing an excessive public improvement assessment to be invalid, held that:

> "There is a point beyond which the legislative department, even when exerting the power of tax-

> ation, may not go, consistently with the citizen's right of property. * * * 'In our judgment, the exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him is, to the extent of such excess, **a taking, under the guise of taxation, of private property for the public use without compensation."** (Emphasis ours)

The records shows that only 1180 live in the ward and all except a very few live in the community of Hackberry, thus the name of "Hackberry Recreation Commission." The bulk of the area in the ward and parish is marsh or swamp. Because of its unusual topography, it remains one of the few areas in the state never completely surveyed on the ground. The people to be served by the proposed facilities are the residents of the community of Hackberry.

The authorities could have established a reasonable district around the community and proposed facilities adequate for their needs. Instead, they attempted to put the entire ward in the district, including uninhabited marsh and swamp lands remote from Hackberry, and proposed grand plans far in excess of the needs of the people. The reasoning of the authorities is quite clear; such plans would result in elaborate recreational facilities for Hackberry, with the local residents paying only five cents on each dollar expended and the unbenefited non-resident and corporate taxpayers paying the remaining 95 cents. Unquestionably, these plans are so grossly excessive of needs and so manifestly unfair as to constitute gross abuse of power and a taking of private property without due process of law.

As already shown, the proposed levies would cost the taxpayers approximately $38,700.00 per year for the next

twenty years, or a total of $774,000.00. The 55% to be paid by intervenors, alone, during that period would amount to $425,000.00, at least one-half of which ($212,250.00) would represent excessive expenditures over and above any reasonable need in providing adequate recreation facilities for the Hackberry area. Surely these facts present a situation going far beyond the point at which the line must be drawn in granting the protection afforded by the due process clauses (*Norwood vs. Baker, Supra*) to prevent the squandering proposed by defendants at the expense principally of taxpayers having no voice whatever in the determination of the excessive levies proposed against them.

VII.

OPINION AND JUDGMENTS OF COURTS BELOW

(a) The opinions of the Fourteenth Judicial District Court of Louisiana are shown in the Appendix, beginning at Pages 1 and 14, respectively. The opinion of the Supreme Court of Louisiana and said Court's per curiam on denial of the application for rehearing are found in the Appendix, beginning at Pages 16 and 37, respectively, and in 145 So. 2d Reporter, beginning at Pages 1 and 11, respectively.

(b) The decree of the Supreme Court of Louisiana on the issue here presented is included in its opinion and will be found in the Appendix, at Pages 35, 36. The formal judgment of the Trial Court is included in the Appendix, at Page 15.

WHEREFORE, your petitioners PRAY that a writ of certiorari issue to the Supreme Court of the State of Louisiana, to the end that the errors aforesaid may be

corrected by this Honorable Court.

Dated December 21, 1962.

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14TH JUDICIAL DISTRICT COURT
PARISH OF CAMERON
STATE OF LOUISIANA

No. 2787

ELIAS THIBODEAUX, ET AL.
VS.
P. FRANK COMEAUX, JR., ET AL.

SWIFT, District Judge:

In this suit the plaintiffs, all qualified voters and property taxpayers of Ward Six of Cameron Parish, Louisiana, attack the validity of an election held on September 17, 1960, which was called by the defendants, the members of the Board of Commissioners of the Hackberry Recreation District, to authorize the district to issue bonds up to $290,000 to acquire land and construct recreational facilities and to levy a four mill tax on the property in the district for the purpose of maintaining and operating such facilities. They also seek injunctive relief to prevent the issuance of such bonds and collection of the tax.

Cities Service Refining Corporation, Pan American Petroleum Corporation and Olin Mathieson Chemical Corporation, the owners of property in Ward Six aggregating approximately 55% of its total assessment, intervened in the suit on the side of the plaintiffs.

Originally, the plaintiffs contended, among other things, that the election was invalid because of irregularities at the polls. However, after a recount of the ballots under the supervision of the Court this position was expressly abandoned. Therefore, the only issues re-

maining in the case are those which arise from the plaintiffs' contentions that the election was null and void because:

> (1) The description of the boundaries of the Hackberry Recreation District are so vague and uncertain that the district never came into existence.
>
> (2) The members of the Hackberry Recreation Commission did not qualify as such by taking their oaths of office as required by law.
>
> (3) The proposed bond issue and tax levies were so grossly in excess of the amount needed to construct and maintain recreational facilities in the district that they constitute a taking of property without due process and an abuse of power by the commissioners.

The evidence discloses that on June 6, 1960, the Cameron Parish Police Jury, acting pursuant to R.S. 33:4562, adopted Ordinance No. Bx-4, 1960, which created the Hackberry Recreation District and defined its boundaries as follows:

> "Commencing at the NW Corner of Section 3, Township 12 South, Range 12 West, La. Mer., thence running South to SW Corner of Section 34, Township 13, South, Range 12 West, thence running East to the SE Corner of Township 13, South, Range 11 West, Thence South to Calcasieu Lake, thence Westerly along West Bank of Calcasieu Lake to the Calcasieu Parish line, thence West along the line between the Parishes of Calcasieu and Cameron, Louisiana to point of commencement, and being the whole of Ward 6 of Cameron Parish, Louisiana." (P-4)

This ordinance also named and appointed the defendants as the five commissioners of the district, and provided

for an organizational meeting of the commission on June 6, 1960.

The meeting was held and the commission was organized, Julius T. Johnson having been elected as chairman. After several other meetings, an engineer, J. B. Shipp, was employed to prepare plans for a proposed recreational facility in the district. Later, other recreational facilities were inspected by the commission, and the preliminary plans were drawn.

Thereafter a special election was called for September 17, 1960, to submit to the resident property taxpayers qualified to vote in the district two propositions: (1) to issue bonds to the amount of $290,000, and (2) to levy a four mill maintenance and operations tax. Both propositions were adopted by a favorable majority, the results of the election being:

FOR: 126 votes, representing an assessed valuation of property of $125,207.50.

AGAINST: 79 votes, representing assessed property valuation of $101,425.19.

On September 6, 1960, the Police Jury of Cameron Parish adopted Ordinances Numbers BX-8 and Bx-9, 1960, re-defining the boundaries of Ward Six and the Hackberry Recreation District. However, these ordinances were not published in the official journal of the parish until September 30, 1960.

The defendants did not take their oaths of office as Commissioners of the Hackberry Recreation District until October 5 and 6, 1960.

The plaintiffs first contend that the district was not defined with the degree of certainty required by law in

the ordinance adopted by the Police Jury of Cameron Parish on June 6, 1960 (P-4), and therefore as no Hackberry Recreation District was ever legally created all subsequent actions of its Board of Commissioners and the election of September 17, 1960, are null and void.

Since a recreation district is a political subdivision of the state having the power of taxation when authorized by the qualified electors in the district, undoubtedly the requirements of law in regard to designation of the boundaries of municipal corporations and other governmental subdivisions having the power of taxation are applicable to recreation districts created under R.S. 33:4562 et seq.

According to 62 C.J.S. 118, Municipal Corporations Section 38:

> "In view of the nature of a municipal corporation, as discussed supra Section 3, it is necessary that the territory included in it should be clearly defined and well bounded. The description must give a definite location and be such as to include territory within certain lines. However, a description is not void for uncertainty where it is not so uncertain as to render impossible the ascertainment of the boundaries intended to be established and the territory intended to be included therein. A misdescription of a boundary of a municipality is not fatal where other courses, distances, and descriptions show with reasonable certainty the boundary intended. A description sufficient for a deed, discussed in Deeds Section 30, is sufficient to describe the boundaries of a municipal corporation."
>
> * * * * *
>
> "While it has been said to be well settled that the descriptions of municipal boundaries are not

construed with the same strictness as those outlining boundaries in grants or contracts, the same rules of construction which obtain in a case of a private conveyance, discussed in Deeds Sections 100-108, have been applied * * *" (Pages 118 and 119).

The Louisiana jurisprudence is generally to the same effect. *Burnham v. Police Jury of Claiborne Parish*, 107 La. 513, 32 So. 87; *Deblieux v. Board of School Directors of Natchitoches Parish*, 142 La. 147, 76 So. 590; *Barbe v. City of Lake Charles*, 216 La. 871, 45 So. 2d 62; *Cheshire v. City of Minden*, 83 So. 2d 526 and *Rice v. Chapman*, 235 La. 257, 103 So. 2d 274.

In the Deblieux case our Supreme Court said:

> "Where, as in this case, the resolution for the creation of the district is so vague and uncertain in its calls that no surveyor can locate one of its boundaries, the defect is fundamental, as it affects the location and extent of the taxing district." (Page 592)

From this it necessarily follows that if a surveyor can locate the boundaries of the taxing district, following the rules of surveying laid down by the land department of the government and by the courts, the description of the territory included in the district is sufficient.

The plaintiffs' specific complaint is that the location of the west, south and east boundaries of the recreation district in the ordinance of June 6, 1960, are vague and uncertain.

Both Harry E. Reid and Ray E. Burgess, the plaintiffs' experts, testified that they could not locate with any degree of certainty the second call in the description, that

is, the Southwest corner of Section 34, Township 13 South, Range 12 West, because both this township and the one adjacent to the east had never been surveyed on the ground and, in their opinions, were irregular because of a shortage of land. Neither of these gentlemen had actually made any surveys in the two townships. Their information as to the possible irregularity thereof and Mr. Reid's location of these townships and their section lines on Exhibits P-7, 8, 9 and 10 apparently were obtained from some work done in the area by F. Shutts Sons, Civil Engineers, Lake Charles. However, the latter did not testify in this case.

On the contrary, the defendants' experts, Emery Domingue and Ralph Caffrey, though admitting the possibility of some shortage of land and irregularity in the townships, testified that they must assume they were regular and that Section 34, Township 13 South, Range 12 West, was situated six miles south of Section 34, Township 12 South, Range 12 West, since there were no official governmental surveys to establish otherwise. But even if these two townships were irregular, they said they could locate the said Section 34 on the ground, following the rules of surveying prescribed by the Department of Interior, if allowed adequate time and money for this purpose. As a matter of fact, Mr. Burgess also acknowledged that he could locate the Southwest corner of the said Section 34 on the ground under these circumstances. However, he would have to qualify his plat by showing that it was his "interpretation only." (TR-93 through 96). It is the Court's impression that every private survey and the plat thereof represent nothing more than the surveyor's interpretation of the location of the corners, except possibly as to those points which still bear the original governmental markers.

All of the experts agreed that generally section and township lines are followed in laying out governmental subdivisions. Nevertheless, it is axiomatic that boundaries must be run by surveyors according to the description of the land; and when the corners are clearly designated in such description the boundaries must be run in a straight line from one corner to another, unless otherwise stated.

In this Court's opinion, when the Cameron Parish Police Jury adopted the ordinance in 1911 designating the boundaries of Ward Six, and in adopting the ordinance of June 6, 1960, creating the Hackberry Recreation District, the language employed to define the west boundary thereof clearly and unalterably fixed it as a straight line between the Northwest corner of Section 3, Township 12 South, Range 12 West, and the Southwest corner of Section 34, Township 13 South, Range 12 West, wherever the latter point is actually located on the ground by a competent survey performed in accordance with the rules of surveying set forth in the Manual of Instructions for Survey of the Public Lands of the United States, prepared and published by the Bureau of Land Management of the United States Department of Interior. The actual establishment of such point on the ground by survey may consume considerable time and expense. And it may or may not be due south of the point of commencement. Nevertheless, the point is capable of being located with certainty, and as a corrollary the west boundary of Ward Six is susceptible of certain location. Applicable in this situation is the maxim which has long been recognized and applied in law, "Id certum est quod certum reddi potest", or that is certain which may be made certain. 8 Am. Jur. 746 and 26 C.J.S. 643.

To hold otherwise would mean that boundaries of a taxing district could never be extended by projection into

unsurveyed lands. And this would be equally true in regard to such descriptions in deeds of private conveyance.

In view of this Court's conclusion with respect to the location of the Southwest corner of Section 34, Township 13 South, Range 12 West, any uncertainty as to the location of the south boundary of Ward Six also passes out of the picture. There remains for consideration, however, the sufficiency of the description with respect to the east boundary along the bank of Calcasieu Lake.

Undoubtedly, there is an error in the wording of the east boundary of Ward Six in the original ordinances, which reads as follows:

> "Thence westerly along the west bank of Calcasieu Lake to the Calcasieu Parish line, * * * "

To reach the Calcasieu Parish line from the fourth call in the description you must either go westerly along the west bank of Calcasieu Lake, and thence in different directions along the south and east banks thereof, or you must go northeasterly along the west bank of the lake. If the former course is followed, then Calcasieu Lake is a part of Ward Six. If the latter course is followed, the east line of Ward Six is the west bank of the lake and, except for a small portion at the southwest corner which is in Ward Five, Calcasieu Lake is not included in any ward in Cameron Parish. On the other hand, if the east boundary of Ward Six is to be the eastern bank of Calcasieu Lake then a small portion of the lake at its southwestern tip is included in both Ward Five and Ward Six. No explanation has been advanced as to why the police jury in 1911 would choose not to include the greater portion of the lake in any ward in the parish. (Of course, from the standpoint of taxation this is of no importance in view of the decision in *State v. Erwin*, 173 La. 507,

138 So. 84 (1931) that title to the bed of the lake is vested in the State of Louisiana.) In any event it would certainly be illogical for the police jury in one ordinance to include the same part of the lake in two wards. In view of this, and also the fact that the jury specifically mentioned both the eastern and southern banks in the traverse of Calcasieu Lake in that part of the ordinance defining the boundaries of Ward Three, this Court concludes that the police jury intended that the east boundary of Ward Six follow the west bank of Calcasieu Lake from the fourth call in the description to the Calcasieu Parish line and that the use of the words "thence westerly" instead of "thence easterly" or "thence northeasterly" was simply an error. However, the police jury's error is not one that renders the description vague and uncertain when considered in connection with the other boundaries set forth in the ordinance outlining the various wards of the parish.

In 26 C.J.S. 656, Deeds, Sec. 30 h. it is stated:

> "If a mistaken or erroneous description is such that it can be disregarded and the property identified or sufficiently designated, or if the means of correcting the mistakes is furnished from the same deed or other competent evidence, the deed is not void; and the false portion of the description will be treated as surplusage." (Page 656)

This rule of law has been consistently followed and applied in Louisiana. *Snelling v. Adair*, 196 La. 624, 199 So. 782, *Magnolia Petroleum Co. v. Marks*, 225 La. 805, 74 So. 2d 36, *Canterberry v. Slade Brothers*, 232 La. 1081, 96 So. 2d 4.

Consequently, this Court concludes that the descrip-

tion employed by the Cameron Parish Police Jury in creating the Hackberry Recreation District through adoption of Ordinance No. BX-4, 1960, is not so vague and uncertain as to nullify the district and the election in question.

Next, the plaintiffs contend that the election of September 17, 1960, was a nullity because the members of the Hackberry Recreation Commission calling same did not qualify by taking their oaths of office within 30 days as required by law.

It seems to be well settled in our jurisprudence that a public officer's failure to qualify under R.S. 42:141 will not vitiate his acts if he fulfills the requirements of a de facto officer. In *State v. Hargis*, 179 La. 623, 154 So. 628, a clerk of court failed to qualify by furnishing the bond required by law within 30 days after receiving his commission. Nevertheless, he took physical possession of the office and performed the duties of clerk for approximately two years before it was discovered that he had not furnished a bond. In overruling an accused's objection to proceeding with the trial of a criminal case on the ground that the court was not legally constituted for lack of a clerk of court, our Supreme Court said:

> "A person is a de facto officer where he exercises the duties of an office under color of a known and valid appointment or election, but where he failed to conform to some precedent, requirement, or condition, as to take an oath, give a bond, or the like. Vide, "Public Officer," 22 R.C.L. Sec. 306, p. 588.
>
> "A de facto officer is no more a usurper than is a de jure officer. As long as he is in possession of the office he will be a de facto officer, and all acts performed by him in the exercise of his of-

ficial functions and strictly within the limits of existing statutes will be considered legal. This is from considerations of public policy.

"The de facto doctrine was introduced into the law as a matter of policy and necessity to protect the interests of the public and individuals, where those interests were involved in the official acts of persons exercising the duties of an office, without being lawful officers. 22 R.C.L. Sec. 307, p. 589.

"And the acts of an officer de facto are as valid and effectual where they concern the public or the rights of third persons, until his title to the office is adjudged insufficient, as though he were an officer de jure. 46 C.J. Sec. 378, p. 1060." (Page 629)

And in *State v. Mayeux*, 228 La. 6, 81 So. 2d 426, where a deputy sheriff failed to take the oath of office or file the bond required by law, the court said:

"In the case of State v. Hargis, 179 La. 623, 154 So. 628, a de facto officer is defined as a person who exercises the duty of an office under color of a known valid appointment or election, but who failed to conform to some precedent, requirement, or condition, as to take an oath, give bond, or the like. See also 67 C.J.S., Verbo Officers, Sec. 146, page 447. It is stated in State v. Breedlove, 199 La. 965, 993, 7 So. 2d 221, 230 that 'the jurisprudence of this State is well established that the acts of an officer de facto, so far as they affect the public, should be recognized as valid.'" (Page 427)

In the present case the defendants took possession of their offices as members of the Board of Commissioners of the Hackberry Recreation District under color of a valid appointment by the Cameron Parish Police Jury.

They were named and appointed as such in its ordinance of June 6, 1960, (P-4), and they were also issued certificates evidencing their appointments. (TR-Page 102) The organizational meeting was held and the officers of the board were elected in accordance with law. Thereafter the commissioners performed the duties of their office by holding meetings, inspecting recreational facilities at nearby towns, employing an engineer to draft plans for the proposed recreational facility and calling the election that is contested in this suit. Certainly they performed all of the duties that were required by their offices from their appointment until the election was held, and even up to the time of suit, and they were recognized by the public as the commissioners of the district. Under these circumstances the defendants were clearly de facto officers whose acts as such, including the calling of the election of September 17, 1960, and the promulgation of the results thereof, were valid and effective.

The plaintiffs' contention that the defendants could not be de facto officers because there did not exist de jure offices due to the insufficiency of the description of the recreation district in the ordinance creating same, of course, must fall in view of this Court's conclusion that the district was described with adequate certainty.

The last question presented for consideration is whether the proposed bond issue and tax levies are so grossly in excess of the amount needed to construct and maintain the recreational facilities in the district that the action of the commissioners constitutes a gross abuse of their power and a taking of the property of the plaintiffs and intervenors without due process of law.

Certainly property taxpayers have the right to injunctive relief to restrain their public officers from ex-

ceeding their lawful powers and authority. In *Donaldson v. Police Jury of Tangipahoa Parish*, 161 La. 471, 109 So. 34, it was said:

> "The true doctrine of the cases in which taxpayers have been complainants is that they have the right to resort to judicial authority to restrain their public servants from transcending their lawful powers, or violating their legal duties in any unauthorized mode which will increase the burden of taxation or otherwise injuriously affect the taxpayers or their property." (Page 38)

However, where the act complained of results from the exercise of discretion by public officers of lawful authority, and the complaint is merely that it is extravagant, useless or unwise injunctive relief is generally denied.

In *Murphy v. Police Jury, St. Mary Parish*, 118 La. 401, 42 So. 979, the Supreme Court of Louisiana said:

> " • • • determining how the money of which they have the administration shall be expended is imposed upon the police juries, not upon the courts; and, for the judiciary to meddle in such matters, save for the purpose of preventing fraud, oppression, or gross abuse of power, would be for it to invade the domain of other departments of the government, in violation of the express prohibitions of the Constitution." (Page 982)

And in *Trahan v. Police Jury of Jefferson Parish*, 225 La. 920, 74 So. 2d 164, it was held:

> "Clearly, the Jefferson Parish Police Jury is fully authorized to proceed in this matter according to its discretion, and in the absence of fraud or a showing of clear abuse of authority (there being none in this case), there is no basis for the injunctive relief sought." (Page 167)

According to 14 Am. Jur, 205, Counties, Sec. 33:

> "So long as the commissioners act honestly and in good faith and keep within the limits of the powers given them by the law, the courts have no authority to interfere with or control their legitimate discretion. The courts may, however, in proper cases, compel the board to perform the duties imposed upon it by law. They may also inquire whether an action or proposed action of the board is within its lawful authority and intervene to prevent illegality of fraud or gross abuse of power." (Page 205)

Thus, it is clear that courts ordinarily will not interfere with the exercise of discretionary powers given public officers and public bodies by legislative act, and injunctive relief will only be granted to prevent fraud, oppression or gross abuse of power.

In this instance the Hackberry Recreation District, acting through its Board of Commissioners, is authorized by law to issue bonds in order to purchase land and construct recreation facilities in the district and to levy a special tax to maintain and operate same. R.S. 33:4566. The amounts of the bond issue and tax are within the limits prescribed by the Constitution and statutes of the State of Louisiana.

The preponderance of evidence on the subject is in favor of the plaintiffs' position that the amounts which the district proposes to spend for the recreation facilities and the maintenance and operations tax are greater than the need when compared with the recreational facilities of other communities. However, this Court cannot say that there is no room for a difference of opinion in this regard, or that the project is so costly that the action taken amounts to a gross abuse of the authority granted

by law to the district. Consequently, the injunctive relief sought by the plaintiffs will be denied.

For the foregoing reasons, there will be judgment rendered herein in favor of the defendants and against the plaintiffs and intervenors rejecting their demands and dismissing the suit at the costs of plaintiffs and intervenors.

A formal decree in accordance with these views will be read and signed upon presentation.

s/ G. WM. SWIFT, JR.
District Judge

Lake Charles, Louisiana
October 23, 1961.

14
30

14TH JUDICIAL DISTRICT COURT
PARISH OF CAMERON
STATE OF LOUISIANA

No. 2787

ELIAS THIBODEAUX, ET AL.
VS.
P. FRANK COMEAUX, JR., ET AL.

SWIFT, District Judge:

The additional authorities cited by plaintiffs and intervenors have not caused the Court to alter its decision in this case. Therefore, the motion for a new trial filed herein by such parties is overruled.

s/ G. WM. SWIFT, JR.
District Judge

Lake Charles, Louisiana
November 17, 1961.

A TRUE COPY
Filed: Nov. 20, 1961
s/ J. Berton Daigle
Clerk

[SEAL]

14TH JUDICIAL DISTRICT COURT
PARISH OF CAMERON
STATE OF LOUISIANA

No. 2787

ELIAS THIBODEAUX, ET AL
VS.
P. FRANK COMEAUX, JR., ET AL

JUDGMENT

This cause having been regularly set for trial and taken up and tried on the merits. Present: G. Allen Kimball of Jones, Kimball, Harper, Tete and Wetherill, Attorneys for Plaintiffs and for Intervenors, Cities Service Refining Corporation and Olin Mathieson Chemical Corporation; George C. Gibson, Attorney for Intervenor, Pan American Petroleum Corporation; and James W. Bean of Bean and Rush, and Jennings P. Jones, Attorneys for Defendants.

When, after hearing the pleadings, the evidence and the argument of counsel, the Court being of the opinion that the law and evidence are in favor of the defendants and against plaintiffs and intervenors for the reasons contained in the written opinion of the Court, dated the 23rd day of October, 1961, previously filed in these proceedings:

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED that there be and there is hereby rendered judgment in favor of all defendants, P. Frank Comeaux, Jr., et al, and against all plaintiffs, Elias Thibodeaux, et al, and all intervenors, rejecting their demands and

dismissing this suit, and at the costs of plaintiffs and intervenors.

JUDGMENT RENDERED, READ ALOUD and SIGNED in Open Court this 30 day of October, 1961, at Lake Charles, Louisiana.

s/ G. WM. SWIFT, JR.
DISTRICT JUDGE

Filed: Oct. 31, 1961

s/ J. Berton Daigle
Clerk of Court

A TRUE COPY
s/ J. Berton Daigle
Clerk

[SEAL]

16

Friday Jun 29 1962

SUPREME COURT OF LOUISIANA

No. 45,990

ELIAS THIBODEAUX, ET AL
VS.
P. FRANK COMEAUX, ET AL

Appeal from the Fourteenth Judicial District Court
in and for the Parish of Cameron
Honorable G .Wm. Swift, Jr., Judge

SUMMERS, Justice.

Plaintiffs and appellants are thirty-seven qualified voters and property taxpayers within what purports to be the Hackberry Recreation District in Cameron Parish. They seek an injunction against its commissioners, defendants herein, to prohibit the issuance or selling of bonds, or the assessment or collection of any taxes by that body.

Cities Service Refining Corporation, Pan American Petroleum Corporation and Olin Mathieson Chemical Corporation own property aggregating approximately fifty-five percent of the total assessment in the recreation district, and they have intervened in support of the plaintiffs' position.

The district court denied the injunction. This appeal followed.

Our jurisdiction is governed by Article XIV, Section 14 (d-4) and Article VII, Section 10 (1) of the Constitution of Louisiana. These articles constitute recreation

districts, as subdivisions of the State; and provide that, when the constitutionality or legality of taxes to be imposed and collected by subdivisions of the State are attacked, this court has appellate jurisdiction.

By R.S. 33:4562, et seq., police juries are authorized and empowered to form and create recreation districts; to own and operate playgrounds and facilities; to engage in activities which would promote recreation and any related activity designed to encourage recreation and promote the general health and well-being of youth. These recreation districts are authorized to vote and levy special maintenance taxes, and issue bonds when authorized to do so by a vote of the qualified electors of the district.

Acting pursuant to this authority the police jury of Cameron Parish adopted Ordinance No. BX-4, 1960, creating the Hackberry Recreation District, and defined its boundaries as follows:

> "Commencing at the NW Corner of Section 3, Township 12 South, Range 12 West, La. Mer., thence running South to SW Corner of Section 34, Township 13, South, Range 12 West, thence running East to the SE corner of Township 13 South, Range 11 West, thence South to Calcasieu Lake, thence Westerly along West Bank of Calcasieu Lake to the Calcasieu Parish line, thence West along the line between the Parishes of Calcasieu and Cameron, Louisiana to point of commencement,and being the whole of Ward 6 of Cameron Parish, Louisiana."

This ordinance also named and appointed the defendants as the five commissioners of the district, established Hackberry as the domicile of the district and fixed June 6, 1960, as the date of the first meeting for the election of officers.

Accordingly, after their appointments the commissioners met, a chairman was elected and the organization completed. Subsequently, other meetings were held, an engineer was employed, and members of the commission accompanied advisors and consultants on trips of inspection of other recreational facilities in the area, and preliminary plans were prepared for the proposed recreational facility.

Thereafter, pursuant to resolution and order of the commissioners and legal notices published on August 12, 19, 26 and September 2, 9, and 16, 1960, a special election was called for September 17, 1960, to submit two propositions to the resident property taxpayers qualified to vote in the district: (1) to issue bonds to the amount of $290,000.00; and (2) to levy a four-mill maintenance and operations tax. Both propositions were adopted by a favorable majority, the results of the election being:

FOR: 126 votes, representing an assessed property valuation of $125,207.50.

AGAINST: 79 votes, representing assessed property valuation of $101,425.19.

On September 6, 1960, the Police Jury of Cameron Parish adopted Ordinances, Nos. BX-8 and BX-9, 1960, redefining the boundaries of Ward 6 and the Hackberry Recreation District. However, these ordinances were not published in the official journal of the parish until September 30, 1960.

The defendants did not take their oaths of office as commissioners of the Hackberry Recreation District until October 3, 5, and 6, 1960.

Originally plaintiffs contended that the election was invalid because of irregularities at the polls. However,

after a recount of the ballots, under the supervision of the trial court, this position was abandoned.

Plaintiffs persist in the other issues of the case contending for the invalidity of the proceeding leading to the elections because:

(1) The description of the boundaries of the Hackberry Recreation District is so vague, uncertain and defective, no valid recreation district ever came into existence.

(2) There was no commission, either de jure or de facto, because no district had been created and the commissioners had not taken their oaths of office.

(3) Even if the district were properly created and the commissioners were de facto officers, the proposed bond issue and tax levies were so grossly excessive as to constitute a taking of property without due process of law and the proposed action is an illegal abuse of power by the defendants acting as commissioners.

We consider first the contention of plaintiffs that the description of the boundaries of the Hackberry Recreation District are so vague, uncertain and defective that it could not serve to define the area of the district, and hence the district was never legally created and all subsequent actions of its Board of Commissioners and the election of September 17, 1960, are null and void.

Since the Hackberry Recreation District is a political subdivision of the State, having the power of taxation when authorized by the qualified electors of the district, undoubtedly the rules of law governing the designation of boundaries of municipal corporations, and other governmental subdivisions having the power of taxation, will serve as a guide in determining the sufficiency

of the designation of boundaries of recreation districts created under R.S. 33:4562, et seq. See McQuillin, Municipal Corporations, 3rd Ed., § 7.04 and 7.05.

The description used by the police jury in Ordinance No. BX-4, 1960, in defining the boundaries of the Hackberry Recreation District, is the same as that used to designate the boundaries of Ward 6 of Cameron Parish, which were established in 1911. An important fact to be noted is the reference in the description of the recreation district to its "being the whole of Ward 6 of Cameron Parish, Louisiana."

It follows, therefore, that any valid objection to the description of the recreation district must be a valid objection to the description of Ward 6 of Cameron Parish. Likewise any attribute of legality attaching to the description of Ward 6 must necessarily serve as an aid to the legality of the description of the recreation district. The two are concomitant.

It is represented, and not denied, that since its creation in 1911 Ward 6 has been recognized as a legally created ward for the purpose of the issuance of bonds and taxation, and no one has complained as to the defects in the boundaries since that date.

Furthermore, we note that a stipulation discloses the exact amount of the assessed valuation of property belonging to the intervenors, and the valuation of all properties in the recreation district on the Cameron Parish tax rolls for the year 1960. Though the description of the recreation district contained in Ordinance No. BX-8 revising the Ordinance BX-4 of June 6, 1960, is represented as the basis for these ascertainments, we fail to understand how it could serve to more definitely enable

the parties to determine the boundaries of the district than the one contained in Ordinance BX-4, 1960. The reason being that reference is made in each to certain calls within Township 13 South, Range 12 West. It is the reference to these calls in the description in Ordinance BX-4, 1960, which forms the primary basis for the objection that the description there is too indefinite to permit the recreation district to be validly formed. The basis of the objection is that Township 13 South, Range 12 West, has never been surveyed; that the sections of that township and range are perforce irregular, inasmuch as adjoining surveys to the east and west do not leave sufficient area to permit the continuation of the adjoining township and range lines through the unsurveyed area without digression, variation and adjustment, and hence Section 34, located in Township 13 South, Range 12 West, cannot be definitely located.

The description of the recreation district complained of purports to place the area in two townships, the northernmost of which has been surveyed and there is no dispute relating to the location of the recreation district boundaries there, except the eastern boundary which lies along the shores of Calcasieu Lake. There is some question as to whether that eastern boundary is the eastern or western bank of the lake (which is oblong and runs generally in a northerly and southerly direction).

The first call in the description at the northwest corner of Section 3, Township 12 South, Range 12 West is the call located in the township for which governmental surveys are available, and no difficulty is presented in locating that point. The next call purports to be the southwest corner of Section 34, Township 13 South, Range 12 West, and this latter township and range are south of Township 12 South, Range 12 West. There is no offi-

cial government survey of that township which lies to the south and for this reason plaintiffs' surveyors testify that the latter point cannot be located with any degree of certainty.

The evidence is to the effect that the point represented by the southwest corner of Section 34, Township 13 South, Range 12 West, would lie twelve miles immediately south of the point represented by the northwest corner of Section 3, Township 12 South, Range 12 West, if the former point had been surveyed, and if that survey followed a regular pattern of regular section, township and range lines. This conforms to the general knowledge we all entertain of governmental surveys.

Plaintiffs have introduced maps in evidence which they contend would probably represent the surveyed Township 13 South, Ranges 11 and 12 West, if they were surveyed. These maps are drawn to show there is insufficient land in the area of Township 13 to make placement of regular range lines in the unsurveyed area. They attribute this deficiency to surveys made to the east and west which, if observed, would infringe upon the area of Township 13 South, Ranges 11 and 12 West. However, these surveys, though referred to, are not in the record. The result is that the affected township and ranges would contain irregular sections according to plaintiffs' surveyors. Thus, Section 34, Township 13 South, Range 12 West, would be at a point considerably to the east of a line due south of the northwest corner of Section 3, Township 12 South, Range 12 West.

Undoubtedly the description of Ward 6, as prepared in 1911, was prepared on a projection that Township 13 South, Ranges 11 and 12 West, were regular, or, when surveyed they would be regular, and the range lines in

that township were projected to be a continuation due southward of the range lines in Township 12 South, Ranges 11 and 12 West, to the north. On the basis of this projection no difficulty is experienced in locating Section 34, Township 13 South, Range 12 West, and, with this point, the western and southern boundaries of the recreation district or those of Ward 6.

The lack of government surveys affecting Township 13 South, Ranges 11 and 12 West, is attributed to the topography of the area, it being salt marsh and difficult of access. The testimony is to the effect that a survey of the area on the ground would be extremely costly. We do not hesitate to deduce that in the year 1911 the topographical conditions were worse, and hence the description of Ward 6 was prepared on the basis of the projections which we have recognized.

Though this situation exists which, according to plaintiffs, makes reliance on surveys impracticable for the purpose of defining the boundaries of the recreation district or of Ward 6, below Township 12, the defendants' surveyors, though admitting the possibility of some shortage of land and irregularity in Township 13 South, Ranges 11 and 12 west, testified that in determining the boundaries in the absence of a survey to the contrary, they must assume that they were regular. Based upon this assumption, Section 34, Township 13 South, Range 12 West, would be situated six miles due south of Section 34, Township 12 South, Range 12 West, or 12 miles due south of Section 3, Township 12 South, Range 12 West. But even if Township 13 South, Ranges 11 and 12 West, were irregular, they could nevertheless locate Section 34, Township 13 South, Range 12 West, on the ground adopting practices and rules for surveying prescribed by competent authority.

All of the surveyors agree that, generally, section and township lines are followed in laying out governmental subdivisions, as this practice relieves the authorities of the problem involved in computing the divided acreage resulting from governmental subdivision lines running diagonally across sections.

It is true that in determining the boundaries of such a subdivision it would be better practice to run a straight line from one call to another. On the basis of the projection which we find was intended the line would run straight south from the northwest corner of Section 3, Township 12 South, Range 12 West, to the southwest corner of Section 34, Township 13 South, Range 12 West. This obviously better practice lends further reliability to our conclusions for, based upon a projection of a regular Township 13 South, Range 12 West, the western boundary of Ward 6 and the recreation district would lie along section lines.

All of the circumstances surrounding this case persuade us to conclude that it was the intention of the drafters of the description of Ward 6 and the recreation district to make the western boundary a line due south from the northwest corner of Section 3, Township 12 South, Range 12 West, to a point where Section 34, Township 13 South, Range 12 West, would be located if the township and range lines south of Township 12 South, Range 12 West, were regularly projected. This is borne out by the south bearing of the western boundary line, which is south from the northwest corner of Section 3, Township 12 South, Range 12 West, and the location of Section 34, Township 13 South, Range 12 West, due south thereof, assuming the regularity of the township and range as projected. In addition, the bearing of the southern boundary line of the recreation district, from

the southwest corner of Section 34, Township 13 South, Range 12 West, eastward, bears out our understanding of what was intended, for such a line falls at the next call which is the southeast corner of Township 13 South, Range 11 West. Thereafter, "then south to Calcasieu Lake" is a logical continuation of this line to a geographical landmark, the bank of the lake.

Defendants' witness, a surveyor, compared the description of Ward 6 with that of Ward 5, the adjoining ward to the west and south, to ascertain if their boundaries coincide. This practice is acceptable and is resorted to in an effort to clarify ambiguities in boundaries. As that witness testified: " * * * This would be true in any survey or any boundary study, the surveyor or engineer would always want to acquaint himself with the adjoining area."

It is noted that the description of the eastern boundary of Ward 5 where it coincides with the western boundary of Ward 6 reads as follows: "Commencing at the NE cor. of Sec. 4, Tp. 12 S., R. 12 W.; thence running south to S.E. cor. of Sec. 33, Tp. 13 S., R. 12 W.; thence east to N.E. cor. of Tp. 14 S., R. 11 W. * * * " These calls and bearings coincide with those of the western and southern boundaries of the recreation district and Ward 6, and are based upon a projection of regular sections, townships and ranges into the unsurveyed area.

We find no difficulty in concluding that the eastern boundary of the recreation district and Ward 6 is along the west bank of Calcasieu Lake. Although the description reads "thence **Westerly** along the West Bank of Calcasieu Lake to the Calcasieu Parish line", (Emphasis added.) reference to the maps introduced in evidence readily discloses that the bearing should have been **easterly** along the west bank of the lake. This uncertainty is

clarified by the fact that continuation of the boundary in a westerly direction would cause an overlap of Ward 6 with a portion of Ward 5, and by the further fact that a subsequent ordinance of the police jury, adopted in 1917, shows that in its description of Ward 6 an "easterly" direction is substituted for the word "westerly" used in the ordinance of 1911. An additional ambiguity is observed when it is noted that the west bank of Calcasieu Lake is a meander, and pursuing its length to the boundary between Calcasieu and Cameron Parishes on the north discloses bearings of easterly, northerly and westerly.

The realistic approach requires acceptance of the interpretation we have adopted. In view of the foregoing considerations and the fact that in defining the boundaries of Ward 3, which lie to the east of Ward 6, the eastern and southern banks of Calcasieu Lake are mentioned in the traverse of the lake; we conclude that the east boundary of Ward 6 follows the west bank of Calcasieu Lake from the fourth call in the description, a point along the west bank of Calcasieu Lake, to the Calcasieu Parish line. The use of the words "thence westerly" instead of "thence easterly" or "thence northeasterly", which would have been more accurate, is an error which is clarified by the other facts and circumstances we have mentioned.

Our approach to this problem is sanctioned by a recognized authority in such matters in this language:

> "If the description of the boundaries in a statute cannot be literally applied on account of inaccuracy, the statute must receive a reasonable construction in order to carry into effect the intent of the legislature." McQuillin, Municipal Corporations, 3rd Ed. § 7.05.

We find applicable to this case the following propositions of law as applied to the interpretation of descriptions in deeds, which, though more demanding than the rules to be applied to the interpretation of descriptions of property forming governmental subdivisions, are nevertheless complied with by the facts before us.

In Emerson v. Cotton, 209 La. 1003, 26 So. 2d 16, 19, it was observed: "Description of property in deeds must be liberally construed to sustain rather than defeat a conveyance." See also Canterberry v. Slade Brothers, 232 La. 1081, 96 So. 2d 4; Magnolia Petroleum Co. v. Marks, 225 La. 805, 74 So. 2d 36; Snelling v. Adair, 196 La. 624, 199 So. 782.

We think it true, under legal authority, that liberality in construction should be applied to the description of a governmental subdivision to sustain its validity rather than defeat its existence. 26 C.J.S. Deeds, Sec. 30 (h). Public policy supports this rule too, for the chaos and turmoil which would ensue in the affairs of a governmental subdivision as a result of a belated declaration of the invalidity of its boundaries after many years of acceptance and usage should be apparent to all.

Undoubtedly the long usage and acquiescence of the people, residents and taxpayers, of Ward 6 since 1911 have established the boundary. We find this to be correct for we note that it has been feasible to ascertain the total assessment of that ward; it has served as a basis for taxation and government all these years, and to declare the recreation district invalid we would, in effect, have to say that Ward 6 is not described with sufficient definiteness to permit validity to attach to its activities in the past. We decline to do so for we feel an unbiased and energetic effort to determine the boundaries would

have resulted in the conclusion we have reached, making proper allowances for the topography of the area, the lack of governmental surveys and the problems confronting the drafters of the description of Ward 6 in 1911.

And so we hold that the description employed by the Cameron Parish Police Jury in creating the Hackberry recreation district in its Ordinance No. BX-4, 1960, is not so vague, indefinite or uncertain as to permit the valid creation of the district and nullify the election in question.

We look next to the contention of plaintiffs that there was no commission, either de jure or de facto, because no district had been created and the commissioners had not taken their oaths of office.

Because we have held that the district was created, the offices of the district are then de jure offices. It remains to determine whether, because the officers appointed did not take their oaths of office within the thirty-day period provided by R.S. 42:141, they can be de facto officers. If it is found that they were de facto officers, their actions taken on behalf of the district are then clothed with the validity which the law requires.

The defendants took possession of their offices as members of the Board of Commissioners of the district under color of a valid appointment by the Cameron Parish Police Jury. They were named and appointed as such in the Ordinance of June 6, 1960, and in further confirmation thereof they were issued certificates evidencing their appointments. Acting under this authority, an organizational meeting was held and the officers of the Board were elected in accordance with law. Thereafter, the commissioners performed the duties of their office by holding meetings, inspecting recreational facilities at

nearby towns, employing an engineer to draft plans for the proposed recreational facility, and by adopting the necessary resolution and issuing the requisite order for calling the election that is contested in this suit.

These actions are the very duties required by their offices, the exercise of which is such as to make manifest their intention to occupy those offices and exercise the duties thereof. From these actions the general public was made aware of the fact that these offices were held by the parties involved, for necessarily the functions which they exercised required that they be recognized as such, and these functions could not have been carried out without such recognition by those who dealt with them. They were therefore de facto officers whose acts, including the calling of the election on September 17, 1960, and the promulgation of the results thereof, were valid and effective.

This court has repeatedly held that a public officer's failure to qualify under R.S. 42:141 will not vitiate his acts if he fulfills the requirements of a de facto officer. In State v. Hargis, 179 La. 623, 154 So. 628, a clerk of court failed to qualify by failing to furnish bond required by law within thirty days after having received his commission. Nevertheless, he took physical possession of the office and performed the duties of clerk for approximately two years before it was discovered that he had not furnished a bond. In ruling on an accused's objection to proceeding with a trial of a criminal case on the ground that the court was not legally constituted due to the lack of a clerk of court, the court recognized the following to be controlling under these facts:

> "A person is a de facto officer where he exercises the duties of an office under color of a known and valid appointment or election, but

where he failed to conform to some precedent, requirement, or condition, as to take an oath, give a bond, or the like. Vide, 'Public Officer', 22 R.C.L. Sec. 306, p. 588.

"A de facto officer is no more a usurper than is a de jure officer. As long as he is in possession of the office he will be a de facto officer, and all acts performed by him in the exercise of his official functions and strictly within the limits of existing statutes will be considered legal. This is from considerations of public policy.

"The de facto doctrine was introduced into the law as a matter of policy and necessity to protect the interests of the public and individuals, where those interests were involved in the official acts of persons exercising the duties of an office, without being lawful officers. 22 R.C.L. Sec. 307, p. 589.

"And the acts of an officer de facto are as valid and effectual where they concern the public of the rights of third persons, until his title to the office is adjudged insufficient, as though he were an officer de jure. 46 C.J. Sec. 378, p. 1060."

And in State v. Mayeux, 228 La. 6, 81 So. 2d 426, where a deputy sheriff failed to take the oath of office or file the bond required by law, the court said:

"In the case of State v. Hargis, 179 La. 623, 154 So. 628, a de facto officer is defined as a person who exercises the duty of an office under color of a known valid appointment or election, but who failed to conform to some precedent, requirement, or condition, as to take an oath, give bond, or the like. See also 67 C.J.S., Verbo Officers, Sec. 146 page 447. It is stated in State v. Breedlove, 199 La. 965, 993, 7 So. 2d 221, 230 that 'the jurisprudence of this State is well-established that the acts of an officer de facto, so far as they affect the public, should be recognized as valid.'"

The final question presented is whether the proposed bond issue and tax levies were so grossly excessive as to constitute a taking of property without due process of law, and hence whether the proposed action is an illegal abuse of power by the defendants acting as commissioners. The recreation district, acting through its Board of Commissioners, is authorized by law to issue bonds in order to purchase land and to construct recreational facilities in the district, and to levy a special tax to maintain and operate same. R.S. 33:4566. The amount of the bond issue and tax in question are within the limits prescribed by the constitution and statutes of the State of Louisiana. The commissioners have therefore not exceeded that authority.

It is a position of the defendants that the court does not have the authority to review all of the various facts affecting the feasibility of the proposed recreational project. This is true, it is asserted, unless the court rules that it has the power to substitute its discretion and judgment for that of the legislature, which passed the required resolution for amending the Constitution of the State of Louisiana authorizing recreational districts, and vesting them with the authority to hold elections and issue bonds; or, unless the court would substitute its discretion for that of both the electorate, which voted in favor of the constitutional amendment, and the Louisiana Legislature which has enacted R.S. 33:4562 et seq., (as amended) authorizing the creation of recreational districts, and conferring authority on those districts to incur debt and issue bonds under certain limitations which have not been exceeded here.

Needless to say, we are cognizant of the doctrine which accords governmental subdivisions discretion in determining how to spend the money of which they have

the administration. We recognize that such a prerogative should not be infringed upon by the courts; and, for the judiciary to meddle in such matters, save for the purpose of preventing injustice, fraud, oppression, or gross abuse of power, would be for it to invade the domain of other departments of the government in violation of the express prohibitions of the constitution for separation of powers. Murphy v. Police Jury, St. Mary Parish, 118 La. 401, 42 So. 979. However, we are also aware that there is a point beyond which the legislative department, even when exercising the power of taxation, may not go and remain consistent with its obligation to recognize the citizen's right not to have his property taken without due process of law. Norwood v. Baker, 172 U.S. 269, 19 Sup. Ct. 187, 43 L. Ed. 443. The exaction from the owner of private property of the cost of the public improvement in substantial excess of the special benefits accruing to him is, to the extent of such excess, a taking, under the guise of taxation, of private property for the public use without compensation. Norwood v. Baker, supra.

In Wight v. Police Jury, 264 Fed. 705, it is said:

> "* * * All of the rules which have been announced with reference to districts of any kind recognize the possibility of unjust, unreasonable, arbitrary action. The courts, while going far to sustain action creating districts and levying taxes and making assessment, nevertheless give efficient life to the constitutional provision which prohibits the taking of private property without due process of law."

The right of the courts to determine whether the action of the commission here is unjust, unreasonable or arbitrary cannot be questioned. It is for this very reason the judiciary exists, and acts as a check upon abusive exercises of power by such a commission . The real concern,

therefore, is not whether this question comes within the province of the judiciary, but whether the action of the commission under the facts and circumstances of this case is such that it should be restrained.

The plans which the commissioners of the recreation district had made prior to the institution of this suit were to a great extent tentative. Although the election was called to permit the issuance of bonds to the extent of $290,000, the testimony does not support the conclusion that that amount was definitely intended to be fully expended. Likewise, no precise or irrevocable determination had been made as to the amount of millage to be levied for maintenance, although the election authorized a levy not to exceed four mills. As we understand the evidence, the $290,000 bond issuance approved in the election was a maximum authorization for the purpose of purchasing and acquiring lands, buildings, equipment and other facilities necessary to provide recreation service in the district. It does not necessarily follow that the full authorization will be expended. The same is true of the levy for maintenance. Though four mills is authorized, it does not follow that the full amount will be collected and used. With respect to the levy for maintenance the plan is to levy just the amount needed to be determined by experience after operations commence; and, with respect to the bond issue, that amount will be determined within the stated limitation after the construction plans are finalized. There is some indication that economies may be practiced which could result in savings.

The planned expenditure for the Hackberry Recreational District, when compared to other districts in the area, indicates that the Hackberry district will spend more money to serve a lesser population than the other districts. It is shown, however, that the quality of the

Hackberry district's construction will be somewhat better and probably more durable. It is also true that the recreation districts used for comparison have other recreational facilities in close proximity which serve to round out their program, whereas the Hackberry district, being more isolated geographically from other districts, will need to depend solely upon their own facilities.

We think the trial court has stated the correct conclusion in the opinion rendered below in these words:

> "The preponderance of evidence on the subject is in favor of plaintiffs' position that the amounts which the district proposes to spend for the maintenance and operations tax are greater than the need when compared with the recreational facilities of other communities. However, this Court cannot say that there is no room for a difference of opinion in this regard, or that the project is so costly that the action taken amounts to a gross abuse of the authority granted by law to the district."

The discretion allowed the district in such cases as the instant one is broad, and that discretion will not be interfered with by the courts unless there is a clear abuse and the action complained of is unjust, unreasonable and arbitrary. Myles Salt Co. v. Iberia Drainage District, 239 U.S. 478, 36 Sup. Ct. 204, 60 L. Ed. 392; Cart v. City of Jennings, 210 La. 748, 28 So. 2d 39.

Although the wisdom of the expenditures might be questioned, we cannot say that the local authorities who are close to the facts and circumstances have acted unjustly, unreasonably or arbitrarily and abused the broad discretion allowed them by law.

Judgment affirmed.

SUPREME COURT OF LOUISIANA

NO. 45,990

ELIAS THIBODEAUX, ET AL.,
VS.
P. FRANK COMEAUX, ET AL.

ON APPLICATION FOR A REHEARING

PER CURIAM

In an application for a rehearing, counsel for appellants complain, inter alia, that the liberality in construction which we have accorded to the description of the Hackberry Recreation District is violative of the role enunciated in DeBlieux vs. Board of School Directors of Natchitoches Parish, 142 La. 147, 76 So. 590, that, where the resolution for the creation of the district is so vague and uncertain in its calls " * * * that no surveyor can locate one of its boundaries, the defect is fundamental, as it affects the location and extent of the taxing district".

Counsel are in error in their interpretation of our decision. The defendants produced the expert testimony of two surveyors who stated that they must assume that Townships 12 and 13 South, Range 12 W. are regular townships but, even if they are irregular, they (the surveyors) could locate Section 34 on the ground, following the rules of surveying prescribed by the U. S. Department of the Interior, if allowed adequate time and money for this purpose. The district judge found that this evidence preponderated over the negative evidence of plaintiff's two experts and, in our original opinion, we approved the judge's appreciation of the expert evidence, the rationale

of our holding being that, with evidence before us that the section line could be located on the ground, it was proper to give a liberal construction to the description so as to sustain, rather than defeat, the creation of the district.

The application for a rehearing is denied.

Hawthorne, J., is of the opinion the rehearing should be granted.

No. 45,990

ELIAS THIBODEAUX ET AL.
Versus
P. FRANK COMEAUX, JR., ET AL.

On Application for Rehearing.

HAWTHORNE, J., not being convinced that the boundaries of the Hackberry Recreation District can be located on the ground, thinks a rehearing should be granted to determine this question.

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PROOF OF SERVICE

I SAM H. JONES, one of the attorneys for petitioners herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 24th day of December, 1962, I served copies of the foregoing petition to the Supreme Court of the United States for certiorari and Appendix thereto on counsel of record for respondents herein, both of whom reside less than one hundred miles from my office, as follows:

(a) On Jennings B. Jones, Jr., by mailing a copy, in a duly addressed envelope with first class postage prepaid, to him at Cameron, Louisiana.

(b) On James W. Bean, by mailing a copy in a duly addressed envelope with first class postage prepaid, to him at P. O. Box 2336, Lafayette, Louisiana.

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P. O. Box 910,
Lake Charles, Louisiana.